

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Acting City Manager

Date: March 15, 2011

Re: Ratify the Public Utility Board's Approval of Amendment Two to Agreement for Construction, Operation and Financing of Geothermal Project Number 3; Amended and Restated Geothermal Project Operating Agreement between Northern California Power Agency and the Geothermal Project Participants; and Amendment Number One to Northern California Power Agency Facilities Agreement

BACKGROUND

By a resolution of its board dated June 2, 2009, Turlock Irrigation District (TID) provided formal notice to Northern California Power Agency (NCPA) and all NCPA members of its intent to terminate its membership in NCPA effective no later than April 1, 2011, in accordance with the two-year notice requirements specified in the Joint Powers Agreement (JPA). The NCPA Commission established April 1, 2011, as the effective termination date for TID's membership. In order to finalize TID's withdrawal from NCPA, the local governing boards of all the Geothermal Project participants, including Alameda, must approve several amended NCPA agreements as described in this report.

Over the past 18 months, NCPA staff has inventoried all relevant agreements, policies, and procedures and updated or developed new agreements and policy documents, as necessary, to effectuate TID's withdrawal. The relevant NCPA agreements, policies and procedures deemed necessary for review and/or revision fall into the following three categories:

1) Natural Gas Related Programs and Projects

All work associated with natural gas-related programs and projects has been completed. Activity included terminating the Natural Gas Purchase Program Third Phase agreement, removing TID from the natural gas procurement and pipeline capacity management agreement, and modifying natural gas pipeline tariff agreements to reflect a split of pipeline capacity between NCPA and TID. No action is required by Alameda for gas related programs.

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2) Obligations under Existing Governance Agreements to be Settled Prior to Exit

NCPA and TID have negotiated a settlement to satisfy provisions of the JPA specifying that any signatory to the JPA terminating its membership in the JPA is obligated to pay its pro-rata share of all encumbrances and indebtedness of NCPA as of the date of termination.

The vehicle for settling all known and unknown claims has been titled the "Exit Agreement." In addition to settling all claims, it would be used to terminate certain remaining agreements between the parties that require termination due to the termination of membership and to establish dispute resolution scope limits and processes for disputed payments. This particular agreement requires approval by the NCPA Commission and TID. No action is required by Alameda related to the Exit Agreement.

3) Geothermal Related Programs and Projects

TID decided to retain its interests in Geothermal Project No. 3 even after withdrawing from NCPA. However, TID is not a signatory to the Geothermal Project Third Phase Agreement, and its rights and entitlements flow instead from:

- Letter agreements between TID and geothermal project participants (Palo Alto, Gridley, and Plumas) by which project entitlement percentages are transferred to TID;
- Letter agreements between TID and NCPA by which NCPA agreed to treat TID as a project participant; and
- NCPA governance documents such as the Facilities Agreement and the Geothermal Project Operating Agreement.

The letter agreements permit TID's commissioner to vote at NCPA Commission meetings and through its appointed representative on the NCPA Facilities Committee. After April 1, 2011, TID will no longer have a commissioner on the NCPA Commission nor have a representative on the Facilities Committee to formally represent its entitlements in the geothermal project.

Similarly, while TID is a signatory to the Facilities Agreement, that agreement provides that representation on the Facilities Committee is contingent on being an NCPA member. As a result, NCPA and TID staff have negotiated agreements that will ensure that TID's rights and obligations as embodied in the letter agreements are continued in successor agreements to be implemented upon TID's withdrawal, and that continuing NCPA member interests are protected in an equal fashion.

In order to finalize TID's withdrawal, all the Geothermal Project participants, including Alameda, will need to approve amendments to three NCPA Geothermal Project related agreements. These agreements are:

- Amendment Number Two to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3;

- Amended and Restated Geothermal Project Operating Agreement between Northern California Power Agency and the Geothermal Project Participants; and
- Amendment Number One to Northern California Power Agency Facilities Agreement.

DISCUSSION

The referenced agreements have been reviewed by the NCPA Facilities Committee, Utility Directors, Legal Committee and Commission at various points of completion over the last three months. The Legal Committee agreed in principle with the agreements as drafted at the time of their review and recommended that Commission approval of the Exit Agreement be conditioned on receipt of TID's executed copies of all agreements within seven (days) of the conditional approval of the agreements by the NCPA Commission.

The Facilities Committee reviewed the final set of agreements on February 17, 2011, and recommended that the Commission approve the agreements as attached in Exhibits 1, 2, and 3. The NCPA Commission approved all the agreements on February 24, 2011. The Public Utilities Board (Board) discussed this item at their February 28, 2011 meeting. The Board voted unanimously to approve the relevant agreements and recommends Council's ratification of their approval. TID's withdrawal from NCPA will be finalized upon approval of the Geothermal Agreements and Facilities Agreement Amendment identified above.

FINANCIAL IMPACT

The funds associated with TID's exit are budgeted in Alameda Municipal Power's account for NCPA's Power Cost Budget. The cost is expected to be under \$30,000.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed Ordinance does not affect the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

This activity would not result in either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment, and is therefore not a "project" for purposes of the California Environmental Quality Act pursuant to CEQA Guidelines section 153789(a) and (b).

RECOMMENDATION


1. Ratify the Public Utility Board's approval of Amendment Number Two to Agreement For Construction, Operation And Financing Of Geothermal Generating Project Number 3;

2. Ratify the Public Utility Board's approval of Amended and Restated Geothermal Project Operating Agreement between Northern California Power Agency and the Geothermal Project Participants;
3. Ratify the Public Utility Board's approval of Amendment Number One to Northern California Power Agency Facilities Agreement; and
4. Authorize the General Manager of Alameda Municipal Power to execute all three agreements.

Respectfully submitted,


FOR G.B.
Girish Balachandran
General Manager

By:


FOR
Janet Oppio
AGM – Energy Resource Planning

Exhibits:

1. Amendment Number Two to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3
2. Amended and Restated Geothermal Project Operating Agreement between Northern California Power Agency and the Geothermal Project Participants – on file in the City Clerk's Office
3. Amendment Number One to Northern California Power Agency Facilities Agreement

cc: Public Utilities Board

**AMENDMENT NUMBER TWO TO
AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING OF
GEOTHERMAL GENERATING PROJECT NUMBER 3**

This Amendment Number Two to Agreement for Construction, Operation, and Financing of Geothermal Generating Project Number 3 ("Amendment Number Two") is made this 1st day of April, 2011 by and among the Northern California Power Agency ("NCPA"), a California joint powers agency; the Cities of Alameda, Biggs, Gridley ("Gridley"), Healdsburg, Lodi, Lompoc, Palo Alto ("Palo Alto"), Roseville, Santa Clara, and Ukiah; the Plumas Sierra Rural Electric Cooperative ("Plumas"), a rural electrical cooperative; and the Turlock Irrigation District ("TID"), a California irrigation district (collectively the "Parties")

WITNESSETH:

WHEREAS,

A. Each of the Parties other than TID is a party to that certain Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, dated as of July 1, 1983; and

B. Each of the Parties other than TID is a party to that certain Amendment Number One to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, dated as of August 1, 1983 ("Amendment Number One"); and

C. The Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3 as amended by Amendment Number One is hereafter referred to as the "Original Agreement" and as amended and supplemented from time to time is hereafter referred to as the "Agreement"; and

D. Pursuant to the Original Agreement, NCPA agreed to construct, operate, and finance a certain geothermal generating project located in Lake and Sonoma Counties constituting the Project for the benefit of those parties other than NCPA executing it (the "Original Project Participants"), each of whom is entitled to its Project Entitlement Percentage of Project capacity and energy and is obligated to pay for the costs of said Project in accordance with Section 5 of the Original Agreement; and

E. The Original Project Participants and TID entered into an Agreement for Transfer of Rights to Capacity and Energy of Geothermal Generating Project Number 3, dated as of October 1, 1984 (the "First Transfer Agreement") by which each Original

Project Participant transferred to TID specified and varying East Block Entitlement Percentages of Project capacity and energy in each calendar year, to and including 2000, and, from calendar year 2001 until the end of the life of the Project, Gridley permanently transferred 0.118% of its 0.456% of East Block Entitlement Percentage of Project capacity and energy to TID, and Plumas permanently transferred 0.227% of its 0.91% East Block Entitlement Percentage of Project capacity and energy to TID; and

F. Palo Alto and TID entered into an agreement dated December 30, 1985 (the "Second Transfer Agreement") and pursuant to the First Transfer Agreement and the Second Transfer Agreement, Palo Alto permanently transferred all of its 12.316% East Block Entitlement Percentage of Project capacity and energy to TID; and

G. The First Transfer Agreement and the Second Transfer Agreement are hereafter collectively referred to as the "Transfer Agreements", and resulted in Gridley having rights to a 0.3360% Project Entitlement Percentage of Project capacity and energy, Palo Alto having rights to a zero % Project Entitlement Percentage of Project capacity and energy, Plumas having rights to a 0.7010% Project Entitlement Percentage of Project capacity and energy, and TID having rights to a 6.3305% Project Entitlement Percentage of Project capacity and energy, together with all additions thereto pursuant to section 7(d) of the Agreement, being referred to as the "Transferred Project Entitlement Percentage" ; and

H. Gridley, Palo Alto and Plumas are hereafter collectively referred to as the "Transferors"; and

I. The Transferors, while having permanently transferred all their respective rights to the Transferred Project Entitlement Percentage to TID pursuant to the Transfer Agreements, remain liable to NCPA with respect to all payments under the Agreement related to the Transferred Project Entitlement Percentage to the extent TID does not make such payments; and

J. As of the effective date of this Amendment Number Two, the only outstanding bonds relating to the Project are NCPA's Geothermal Project 3 Revenue Bonds, 2009 Series A (the "2009 Series A Bonds") issued under the Indenture of Trust, dated as of November 1, 1983, between NCPA and U.S. Bank Trust National Association, as successor Trustee (as amended and supplemented, the "Indenture") and the Indenture is the only existing Bond Resolution for purposes of the Original Agreement; and

K. The Indenture provides that NCPA will not consent or agree to any amendment of the Agreement which will reduce the payments required thereunder or which will in any manner materially impair or materially adversely affect the rights of NCPA thereunder or the rights or security of the holders of the bonds issued under the

Indenture; provided that nothing in the Indenture shall be construed so as to prohibit any other amendment of the Agreement; and

L. The Parties desire to amend the Original Agreement to, among other things, reflect the terms of the Transfer Agreements by substituting TID for the Transferors as the Project Participant under the Agreement with respect to the Transferred Project Entitlement Percentage while, in order to avoid the appearance of the impairment of the security of the holder of any 2009 Series A Bond, so long as any 2009 Series A Bond remains outstanding under the Indenture, each of the Transferors shall continue to remain liable for all payment obligations accruing under the Agreement which are related to the Transferred Project Entitlement Percentage such Transferor transferred to TID; and

M. The Parties also desire to amend the Original Agreement to clarify that environmental attributes associated with the Project capacity and energy are included within the rights held by the Project Participants, including TID;

NOW, THEREFORE, the Parties hereto agree as follows:

1. Terms used in this Amendment Number Two and not defined herein have the meaning given to them in the Original Agreement.

2. To provide that TID, and not the respective Transferors, is the Project Participant with respect to the Transferred Project Entitlement Percentage, Appendix "A" of the Agreement ("SCHEDULE OF PROJECT PARTICIPANTS AND PROJECT ENTITLEMENT PERCENTAGES") is hereby amended in its entirety to read as provided in Exhibit 1 hereto to include a 12.661% TID East Block Entitlement Percentage and a 6.3305% Project Entitlement Percentage and to correspondingly reduce the East Block Entitlement Percentages and Project Entitlement Percentages of the Transferors.

3. To recognize that the 2009 Series A Bonds were issued when the Transferors were the Project Participants with respect to the Transferred Project Entitlement Percentage, and to increase the security for the 2009 Series A Bonds by adding TID as the Project Participant with respect to the Transferred Project Entitlement Percentage while maintaining the respective payment obligations of the Transferors under the Agreement with respect to the Transferred Project Entitlement Percentage so long as any 2009 Series A Bonds remain outstanding under the Indenture, Section 5(f) of the Original Agreement is hereby supplemented by adding at the end thereof the following:

"Notwithstanding anything in this Section 5(f) or elsewhere in this Agreement to the contrary, in the event the Turlock Irrigation District ("TID") should fail to timely pay any amount payable by it under the Agreement, which payment obligation accrued while any of NCPA's Geothermal Project 3 Revenue

Bond, 2009 Series A ("the 2009 Series A Bonds") remained outstanding under the Indenture of Trust, dated as of November 1, 1983, between NCPA and U.S. Bank Trust National Association, as successor Trustee, as amended and supplemented (the "Indenture"), the City of Gridley ("Gridley"), the City of Palo Alto ("Palo Alto") and the Plumas Sierra Rural Electric Cooperative ("Plumas" and together with Gridley and Palo Alto the "Transferors") shall remain contingently and secondarily obligated for each such payment in the following proportions, such that the security of the holders of the 2009 Series A Bonds with respect to the Agreement is not adversely affected by the addition of TID as a Project Participant and the reduction of the Project Entitlement Percentages of the Transferors with respect to the Transferred Project Entitlement Percentage:

<u>Transferor</u>	<u>Share of Amounts Not Paid by TID</u>
Gridley	0.932%
Palo Alto	97.275%
Plumas	1.793%

In the event TID fails to make a payment when due under the Agreement, which payment obligation became due while any of the 2009 Series A Bonds remain outstanding under the Indenture, NCPA shall, not more than ten (10) days after the due date for such payment, send the written demand contemplated by Section 7(a) of the Agreement to TID and to the Transferors by electronic means or overnight delivery service or by such other means as shall provide for delivery the next business day. Such demand shall specify the amount due but not received by NCPA. If TID has not made the missed payment by the twenty-fifth (25th) day following NCPA's sending the demand for payment, each Transferor shall, not later than the thirtieth (30th) day from the date of such demand, pay its respective share of the amount specified in the NCPA notice of nonpayment from the sources specified in the Agreement for other payments thereunder by the Project Participants. The Transferors' contingent and secondary obligation for payments which TID fails to make when due under the Agreement shall cease, and the Transferors shall be relieved of all obligations to make payments pursuant to this Section 5(f), on the first date when no 2009 Series A Bonds remain outstanding under the Indenture; provided, however, that nothing in this sentence shall relieve any Transferor of its obligation to pay amounts which became due from TID under the Agreement prior to such first date.

In addition to any other remedy available under the Agreement, each Transferor may directly recover from TID any payments made pursuant to this section as well as any costs or damages incurred by it as a consequence of the failure of TID to make any payment under the Agreement, including the recovery of any attorneys fees."

4. The Original Agreement is hereby supplemented by adding a new Section 17 thereto to read as follows:

"17. **Attributes Associated with Project.** A Project Entitlement Percentage of Project capacity and energy includes not only the rights to electric capacity and energy, but also the rights to a proportionate share of any associated attributes of the Project that either exist or may exist in the future. This includes attributes such as environmental credits, renewable energy credits, resource adequacy credits or other attributes associated with the production of electricity from a renewable energy resource, along with ancillary services. In all cases the right to a proportionate share of any associated attributes of the Project is subject to the terms of this Agreement including the provisions hereof relating to the loss by a Project Participant of the rights to Project capacity and energy including the associated attributes

Upon the request of a Project Participant, evidence of the ownership of such associated attributes will be provided by NCPA to the requesting Project Participant (and may thereafter be sold by the Project Participant to third persons subject to the terms of Section 18 of this Agreement and without being subject to a right of first refusal by other Project Participants), in proportion to its respective Project Entitlement Percentages of Project capacity and energy but subject to the provisions of Section 18 of this Agreement and such commercially reasonable conditions as may be imposed or adopted by the NCPA Commission from time to time.

5. The Original Agreement is hereby supplemented by adding a new Section 18 thereto to read as follows:

"18. **Federal Tax Matters.** Each Project Participant recognizes that Bonds issued with respect to the Project may bear interest that is excluded from gross income for federal income tax purposes or may be issued under circumstances that entitle NCPA or Bondholders to subsidy payments from the United States or federal tax credits with respect to such Bonds (such exclusion from gross income or entitlement to a subsidy or tax credit being referred to herein as a "Tax Benefit") and subject to the provisions of federal tax law that limit, among other things, the arrangements permitted with respect to the sale, assignment, delegation, or other disposition of Project Entitlement Percentages of Project capacity and/or energy, or environmental and other associated attributes of the Project. Each Project Participant shall comply with the covenants relating to Tax Benefits contained in the Bond Resolutions, including the limitations on private use permitted under such covenants as if the Project Participant had made such covenant with respect to

its Project Entitlement Percentage of Project capacity and energy. No sale, assignment, delegation or other disposition of all or any portion of a Project Participant's rights or obligation under this Agreement, including Project Entitlement Percentages of Project capacity and/or energy, or environmental and other Project attributes, that have been financed in whole or part with Bonds which have a Tax Benefit shall be effective until: (i) such Project Participant shall have given prior written notice thereof to NCPA; and (ii) NCPA's bond counsel shall have rendered an opinion to the effect that (A) such sale, assignment, delegation or other disposition will not adversely affect the Tax Benefits associated with such Bonds; and (B) such sale, assignment, delegation or other disposition is within any private use restriction or other limitation with respect to the Tax Benefits associated with such Bonds applying such restrictions and other limitations solely to the Project Participant's Project Entitlement Percentage of Project capacity and energy and not to the Project as a whole. Notwithstanding the immediately preceding sentence, each Project Participant may, without obtaining such bond counsel opinion, sell, assign, delegate or make such other disposition to which it is entitled hereunder in a transaction which complies with tax-related guidelines established by the NCPA Commission from time to time which guidelines have been approved by NCPA's bond counsel."

6. The Original Agreement is hereby supplemented by adding a new Section 19 thereto to read as follows:

"19. **"In-lieu" JPA Cost Assessment for Non-Members.** Project Participants may not necessarily be members of NCPA. NCPA members pay a joint powers agreement cost assessment for NCPA administrative costs, pursuant to the joint powers agreement by which NCPA is formed, and non-NCPA member Project Participants hereby likewise agree to pay for a portion of those costs, but only as applied to the non-NCPA member Project Participant's Project Entitlement Percentage of energy produced on behalf of the Project Participant. In addition to other payments required by this Agreement, non-NCPA member Project Participants shall pay the annual "in-lieu" JPA Cost Assessment, invoiced by NCPA in twelve (12) equal billings, which will be separately identified for each non-NCPA member Project Participant. If a non-NCPA member Project Participant later becomes an NCPA member, such Project Participant shall no longer be required to pay the in-lieu JPA Cost Assessment. If an NCPA member Project Participant later withdraws from NCPA, and is no longer an NCPA member, such Project Participant will thereafter be subject to the in-lieu JPA Cost Assessment as described in this section.

The In-lieu JPA Cost Assessment shall be:

In-lieu JPA Cost Assessment = (JPA Cost Assessment Rate) x (MWh of Project energy produced on behalf of the Project Participant in the prior calendar year as metered at the point of delivery)

The "JPA Cost Assessment Rate" shall be the amount per MWh charged to NCPA members in any given year by the NCPA Commission as a JPA assessment pursuant to Article IV section 3(a) of the Amended and Restated Northern California Power Agency Joint Powers Agreement, and shall in no event exceed 15 cents per megawatt hour."

7. The proviso contained in Section 7(d) of the Agreement is hereby amended to read as follows:

"provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without the written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's Project Entitlement Percentage set forth in Appendix A as in effect on April 1, 2011."

8. Section 11(e) of the Original Agreement is hereby amended in its entirety to read as follows:

"Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Project Entitlement Percentage vote within 10 days following mailing of notice of such Project Participants' action by giving written notice of the veto to NCPA and the other Project Participants unless at a meeting of the NCPA Commission called for the purpose of considering the veto and held within 30 days after such veto notice, the holders of 65% or greater of Project Entitlement Percentages shall vote to override the veto."

9. Subsection (a), (b) and (c) of Section 12 of the Original Agreement are hereby deleted. Subsection (d) of Section 12 of the Original Agreement is hereby amended by deleting the subsection designation (d) and amending the language of former subsection (d) in its entirety to read as follows:

"The term of this Agreement commenced on December 14, 1983. The Term of this Agreement shall continue until the later of: (i) the expiration of the useful life of the Project, or (ii) the date on which all Bonds issued have been retired, or full provision made for their retirement, including interest until their retirement date. In the event of the termination of the existence of NCPA prior to the termination of this Agreement, it is the intent of the Project Participants that this

Agreement continue as an agreement among the Project Participants with the Project Participants performing the duties and obligations of NCPA as a group."

10. Section 14 of the Original Agreement is hereby amended in its entirety to read as follows:

"This Agreement is a service schedule and a third phase agreement attached to and incorporated into the Facilities Agreement by and among the Project Participants and NCPA. "

11. By execution of this Amendment Number Two, TID shall be deemed to have executed the Agreement and be considered a Project Participant for all purposes of the Agreement.

12. Except as provided in this Amendment Number Two, the Original Agreement shall remain in full force and effect.

13. This Amendment Number Two may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, each Project Participant has executed this Amendment Number Two with the approval of its governing body and NCPA has executed this Amendment Number Two in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

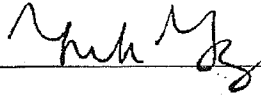
By: _____

Approved as to form:

CITY OF ALAMEDA

By: _____

Approved as to form:



CITY OF BIGGS

By: _____

Approved as to form:

CITY OF GRIDLEY

By: _____

Approved as to form:

CITY OF HEALDSBURG

By: _____

Approved as to form:

CITY OF LODI

By: _____

Approved as to form:

CITY OF LOMPOC

By: _____

Approved as to form:

CITY OF PALO ALTO

By: _____

Approved as to form:

CITY OF ROSEVILLE

By: _____

Approved as to form:

CITY OF SANTA CLARA

By: _____

Approved as to form:

CITY OF UKIAH

By: _____

Approved as to form:

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE

By: _____

Approved as to form:

TURLOCK IRRIGATION DISTRICT

By: _____

Approved as to form:

Exhibit 1

APPENDIX A
In effect April 1, 2011

**SCHEDULE OF PROJECT PARTICIPANTS AND PROJECT ENTITLEMENT
PERCENTAGES**

PROJECT PARTICIPANT	PROJECT NO. 2 ENTITLEMENT PERCENTAGE	EAST BLOCK ENTITLEMENT PERCENTAGE	PROJECT ENTITLEMENT PERCENTAGE
City of Alameda	14.994%	18.771%	16.8825%
City of Biggs	0.000%	0.454%	0.227%
City of Gridley*	0.334%	0.338%	0.336%
City of Healdsburg	3.252%	4.096%	3.674%
City of Lodi	14.560%	6.000%	10.28%
City of Lompoc	3.266%	4.096%	3.681%
City of Palo Alto*	0.000%	0.000%	0.000%
City of Roseville	3.252%	12.514%	7.883%
City of Santa Clara	54.651%	34.13%	44.3905%
City of Ukiah	4.972%	6.257%	5.6145%
Plumas Sierra Rural Electric Cooperative*	0.719%	0.683%	0.701%
Turlock Irrigation District*	0.000%	12.661%	6.3305%
TOTALS	100.000%	100.000%	100.000%

* Pursuant to Section 5(f) of the Agreement, the City of Gridley, the City of Palo Alto and the Plumas Sierra Rural Electric Cooperative remain contingently and secondarily responsible for all payment obligations of Turlock Irrigation District while the 2009 Series A Bonds remain outstanding.

**AMENDMENT NO. 1
TO
NORTHERN CALIFORNIA POWER AGENCY
FACILITIES AGREEMENT**

This Amendment no. 1 is made as of April 1, 2011 by and between the Northern California Power Agency, a joint powers agency ("NCPA"), certain of its member agencies, and the Turlock Irrigation District, a California Irrigation District ("TID"), with reference to the following:

A. NCPA and certain of its members, consisting of the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara and Ukiah; [the Port of Oakland]; TID; and associate NCPA member Plumas Sierra Rural Electric Cooperative have entered into a Facilities Agreement dated as of September 22, 1993.

B. The Facilities Agreement provides for the means by which NCPA provides services to the NCPA generating projects, allocates costs to and among such projects, and by which the project participants can provide direction to NCPA with respect to the governance and operation of such projects.

C. At the time of its approval, the signatories to the Facilities Agreement did not contemplate that a participant in an NCPA generating project could be a non-NCPA member. Hence, the Facilities Agreement provides in section 1.17 that a "participant" in the Facilities Agreement is a member of NCPA which is signatory to the Facilities Agreement, and in Article 4 that the Facilities Committee by which project participants in NCPA projects provide direction to NCPA is composed of participants.

D. TID has given notice to NCPA of its withdrawal from NCPA effective April 1, 2011, but will remain a project participant in the Geothermal Project no. 3. In an Amended and Restated Geothermal Operating Agreement dated as of April 1, 2011, the participants in that project, including TID, and NCPA have agreed to amend the Facilities Agreement as necessary to provide TID the ability to remain a signatory to the Facilities Agreement and to have an on-going participation on the Facilities Committee.

NOW, THEREFORE, the Parties agree as follows:

1. Section 4.9 is hereby added to Article 4 ("Facilities Committee") of the Facilities Agreement to read as follows:

"4.9 Notwithstanding any other provision of this Agreement to the contrary, Turlock Irrigation District shall be entitled to designate one member of the Facilities Committee for so long as Turlock Irrigation District shall remain a project participant in Geothermal Project No. 3, which member shall have voting rights only with respect to those matters directly relating to said project."

2. Amendments to the Facilities Agreement which do not impair the rights of TID as provided in section 1 shall not require the consent of TID, provided that TID shall be given written notice of any amendment to the Facilities Agreement.

3. In all other respects the Facilities Agreement shall remain in full force and effect.

WHEREFORE, NCPA upon authorization of its Commission, and the Facilities Agreement participants, after all due authorization by their respective governing bodies, have executed this First Amendment as evidenced by the signatures of their authorized representatives below.

**NORTHERN CALIFORNIA POWER
AGENCY**

**TURLOCK IRRIGATION
DISTRICT**

By: _____

By: _____

Its: General Manager

Its: General Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

General Counsel

General Counsel

ALAMEDA MUNICIPAL POWER

CITY OF BIGGS

By: _____

By: _____

Its: General Manager

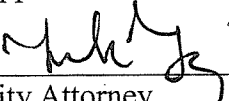
Its: City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:


Assistant City Attorney

City Attorney

CITY OF GRIDLEY

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF LODI

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF PALO ALTO

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF HEALDSBURG

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF LOMPOC

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF ROSEVILLE

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF UKIAH

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF SANTA CLARA

By: _____
Its: City Manager

Date: _____

Approved as to form:

City Attorney

**PLUMAS SIERRA RURAL
ELECTRIC COOPERATIVE**

By: _____
Its: General Manager

Date: _____

Approved as to form:

General Counsel

CITY OF ALAMEDA RESOLUTION NO. _____

Approved as to Form

City Attorney

RATIFYING THE PUBLIC UTILITY BOARD'S APPROVAL OF AMENDMENT TWO TO AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING OF GEOTHERMAL PROJECT NUMBER 3; AMENDED AND RESTATED GEOTHERMAL PROJECT OPERATING AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND THE GEOTHERMAL PROJECT PARTICIPANTS; AND AMENDMENT NUMBER ONE TO NORTHERN CALIFORNIA POWER AGENCY FACILITIES AGREEMENT

WHEREAS, the Turlock Irrigation District (TID) has provided the required two-year notice of termination of membership in the Northern California Power Agency ("NCPA") Joint Powers Agreement (JPA) and the NCPA Commission has accepted that two-year notice to be effective April 1, 2011; and

WHEREAS, TID's termination of membership in the JPA affected its rights and obligations under various agreements between TID and NCPA members and between TID and NCPA, requiring those agreements to be either terminated, clarified or amended in some fashion; and

WHEREAS, any signatory to the JPA terminating its membership in the JPA is obligated to pay its pro-rata share of all debts, liabilities and obligations of NCPA as of the date of termination as a condition precedent to such termination and withdrawal; and

WHEREAS, TID and NCPA staff have worked together to identify all agreements needing to be either terminated, clarified or amended, and have arrived at a recommended settlement amount that would satisfy TID's obligation to pay its pro-rata share of all debts, liabilities and obligations of NCPA as of the date of termination; and

WHEREAS, the agreements requiring NCPA member approval to effectuate TID's withdrawal from the JPA are as follows:

- Amendment Number Two to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3;
- Amended and Restated Geothermal Project Operating Agreement Between Northern California Power Agency and the Geothermal Project Participants; and
- Amendment Number One to Northern California Power Agency Facilities Agreement.

WHEREAS, the NCPA Commission has approved all the necessary Geothermal Agreement and Facilities Agreement modifications and approved the Membership Withdrawal and Exit Agreement between NCPA and Turlock Irrigation District on February 24, 2011; and

WHEREAS, in order to finalize TID's withdrawal from NCPA the Alameda Public Utilities Board approved: (1) Amendment Number Two to Agreement For Construction, Operation And Financing Of Geothermal Generating Project Number 3; (2) Amended And Restated Geothermal Project Operating Agreement Between Northern California Power Agency And The Geothermal Project Participants; and (3) Amendment Number One To Northern California Power Agency Facilities Agreement at its February 28, 2011 public meeting.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Alameda that the Council hereby ratifies the Public Utilities Board's approval of:

(1) Amendment Number Two to Agreement For Construction, Operation And Financing Of Geothermal Generating Project Number 3;

(2) Amended And Restated Geothermal Project Operating Agreement Between Northern California Power Agency And The Geothermal Project Participants;

(3) Amendment Number One To Northern California Power Agency Facilities Agreement; and

(4) Authorize the General Manager of Alameda Municipal Power to execute all three agreements.

* * * * *

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 8th day of March, 2011, by the following vote to wit:

AYES

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 9th day of March, 2011.

Lara Weisiger, City Clerk
City of Alameda